

REMARKS/ARGUMENTS

The Examiner is thanked for the courtesy of a telephone interview on June 13th, 2010 during which the amendments presently set forth and Applicant's reasoning as to why the presently amended claims clearly distinguish over the references cited by the Examiner were discussed. Applicant respectfully submits that the substance of the interview is set forth in the following remarks.

As discussed in the interview, Applicant has amended independent claims 1 and 6 to further clarify embodiments of the invention. During the interview, the Examiner concurred with Applicants that amended independent claims 1 and 6 are distinguishable over the prior art cited in the previous Office Action.

Reconsideration in light of the amendments, the interview, and the remarks made herein, is respectfully requested.

Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 1-3, 5-8, and 10 under 35 U.S.C. §112, second paragraph. More specifically, the Examiner indicates that the language "the pre-determined conditions," as recited in claims 1 and 6, lacks antecedent basis. Applicant has amended claims 1 and 6 to clarify the claim language accordingly.

Therefore, Applicant respectfully requests the rejection under 35 U.S.C. §112 be withdrawn.

Rejection Under 35 U.S.C. § 103

In the Final Office Action, the Examiner rejected claims 1, 5, 6, and 10 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,373,498 issued to Abgrall ("Abgrall") in view of U.S. Patent No. 5,717,923 issued to Dedrick ("Dedrick"); and claims 2, 3, 7, and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Abgrall and Dedrick, in view of U.S. Patent No. 5,948,061 issued to Merriman et al. ("Merriman"). Applicant respectfully traverses the rejection and submits that the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

In KSR International Co. vs. Teleflex, Inc., 127 S.Ct. 1727 (2007) (Kennedy, J.), the Court explained that “[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” The Court further required that an explicit analysis for this reason must be made. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” KSR, 127 S.Ct. at 1741, quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006).

Applicant respectfully submits that there is no suggestion or motivation to combine Abgrall, Dedrick, and Merriman and thus no *prima facie* case of obviousness has been adequately established. Further, even if Abgrall, Dedrick, and Merriman were properly combinable, their combination would not teach suggest the limitations of independent claims 1 and 6.

In the instant case, Applicant respectfully submits that there are significant differences between the cited references and the claimed invention and there is no apparent reason to combine the known elements in the manner as claimed (except for impermissible hindsight), and thus a *prima facie* case of obviousness has not been adequately established.

Abgrall merely discloses a profile manager obtaining the user and system profiles from the computer system 100 based on user preferences, system hardware, and software installed at the computer system 100. Upon obtaining the user and system profile of the computer system 100, the profile manager application forwards the results to the data loader application, which subsequently provides the information to the server 22, which matches the user indicted

preferences with database 24 (FIG. 1). The server 22 then processes the user profile or demographic data and targets content to the users which have similar profiles. Content is then transmitted to user computer system's based on the user profile data and/or the aggregate user profile model (as shown by A4). The subsequent content 64 is downloaded and stored in system firmware 176, designated by numeral 88b. The profile collection process is continued as long as the computer system 100 is activated. When the computer system 100 is subsequently powered up (see FIG. 4B), the system again performs POST. The content that was previously downloaded and stored in system firmware 176 is then displayed, prior to loading and/or execution of the operating system (Abgrall, col. 9, lines 25-58; Figures 1-2).

In the Office Action, the Examiner alleges that subsequent content 64 being downloaded and stored in the system firmware 176 designated by 88b in Abgrall corresponds to “formatted first and second advertisements” or “formatted first advertisement” as recited in claims 1 and 6, respectively. Applicant respectfully disagrees and submits that the subsequent content 64 in Abgrall is merely disclosed to be displayed prior to loading and/or execution of the operating system.

However, embodiments of Applicant's invention relate to a bootloading process that may be divided into several purchasable time slots and advertisement data may be formatted to be displayed in the selected time slots. Further, embodiments of Applicant's invention relate to the control module of the server associating a fee with the advertiser for the distributed advertisements.

In order to clarify these embodiments of the invention, Applicant has amended independent claims 1 and 6. Looking at independent claim 6, independent claim 6 has been amended such that it generally recites a server computer comprising a control module to: distribute the formatted first advertisement to the one of the plurality of personal computers via the network, wherein the one of the plurality of personal computers is configured to display the first advertisement, respectively, during one of the plurality of time slots, the one of the plurality of time slots having been purchased by the advertiser...and associate a fee with the advertiser for the distributed first advertisement.

Looking at independent claim 1, independent claim 1 has been amended such that it generally recites: ...wherein a time frame occurs while or before bootloading and is divided into a

plurality of time slots...distributing the formatted first and second advertisements to the first and second personal computers, respectively, wherein the first and second personal computers are configured to display the first and second advertisements, respectively, during one of the plurality of time slots, the one of the plurality of time slots having been purchased by the advertiser...associating a fee with the advertiser for one of the distributed first or second advertisements.

Applicant respectfully submits that there is no teaching in Abgrall of these elements as recited in amended independent claims 1 and 6. Additionally, the Examiner admits that Abgrall fails to disclose "receiving an advertising content from an advertiser" such that Abgrall cannot further disclose the advertiser purchasing one of the advertisements and time slots, as set forth in claims 1 and 6.

As to Dedrick, Dedrick merely discloses an advertiser 18 creating an advertisement for a camera which describes the camera in both audio and video format. Both of these consumption formats are transferred to the metering servers 14 and subsequently to the client systems 12 (Dedrick, col. 4, lines 44-55). As above, while an advertisement is disclosed to be transferred to the client system 12, there is no teaching in Dedrick of the elements as recited in amended claims 1 and 6.

More specifically, Dedrick fails to disclose amended independent claim 6 generally reciting a server computer comprising a control module to: distribute the formatted first advertisement to the one of the plurality of personal computers via the network, wherein the one of the plurality of personal computers is configured to display the first advertisement, respectively, during one of the plurality of time slots, the one of the plurality of time slots having been purchased by the advertiser...and associate a fee with the advertiser for the distributed first advertisement. Further Dedrick fails to disclose amended independent claim 1 generally reciting: ...wherein a time frame occurs while or before bootloading and is divided into a plurality of time slots...distributing the formatted first and second advertisements to the first and second personal computers, respectively, wherein the first and second personal computers are configured to display the first and second advertisements, respectively, during one of the plurality of time slots, the one of the plurality of time slots having been purchased by the

advertiser...associating a fee with the advertiser for one of the distributed first or second advertisements.

Therefore, Applicant respectfully submits that the prior art of record does not teach or suggest the claim limitations of Applicant's amended independent claims 1 and 6 such that they are allowable. Further, based on the dependency of claims 2-3, 5, and 7-8 on independent claims 1 and 6, respectively, which are believed to be in condition for allowance, Applicant respectfully submits that claims 2-3, 5, and 7-8 are believed to be allowable for at least the reasons set forth above.

Therefore, Applicant believes that amended independent claims 1 and 6 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicant respectfully requests the rejection under 35 U.S.C. §103(a) be withdrawn.

Conclusion

In view of the remarks made above, it is respectfully submitted that pending claims 1-3 and 5-8 are allowable over the prior art of record. Thus, Applicant respectfully submits that all the pending claims are in condition for allowance, and such action is earnestly solicited at the earliest possible date. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application. To the extent necessary, a petition for an extension of time under 37 C.F.R. is hereby made. Please charge any shortage in fees in connection with the filing of this paper, including extension of time fees, to Deposit Account 02-2666 and please credit any excess fees to such account.

Respectfully submitted,

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